

LEGADMINMAN

CHAPTER 8

MANAGEMENT OF INVESTIGATIONS

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8000. SCOPE. The provisions of this chapter provide guidance for managing investigations conducted by Marine Corps commands.

8001. TYPES OF INVESTIGATIONS. When an incident or mishap occurs, there may be several reasons, and separate requirements, to conduct an investigation. Among the reasons for conducting an investigation are to prevent similar incidents in the future and to obtain and preserve available evidence for use in litigation, claims, disciplinary, or adverse administrative actions. The following types of investigations may be required.

1. JAGMAN Investigations. Chapter II of the JAGMAN contains comprehensive guidance for conducting administrative investigations and provides content and sample documentation requirements for specific types of incidents. Section 0202 of the JAGMAN identifies other types of investigations, agencies responsible for conducting these investigations, their relationship to administrative investigations under Chapter II of the JAGMAN, and applicable references. The JAGMAN also provides guidance on the three types of JAGMAN investigations: command investigations, litigation-report investigations, and courts/boards of inquiry.

2. UCMJ Investigations. R.C.M. 303, MCM, 1998, requires immediate commanders to make or cause to be made a preliminary inquiry into allegations that a member of the command has committed an offense or offenses triable by court-martial. Commanders may conduct such inquiry personally, task a subordinate to conduct the inquiry, or seek assistance from law enforcement personnel (e.g., the Provost Marshal's Office, Criminal Investigative Division, or Naval Criminal Investigative Service). If the only basis for an investigation is disciplinary action, a separate JAGMAN investigation should not be conducted.

3. NCIS Investigations. SECNAVINST 5520.3B mandates that, within the DON, the Naval Criminal Investigative Service is primarily responsible for investigating suspected or alleged major criminal offenses, defined as those offenses punishable under the UCMJ (or similarly framed Federal, State, local, or foreign laws or regulations) by confinement for a term greater than 1 year. SJAs and command investigating officers must determine if NCIS is investigating the same incident and, if so, coordinate their efforts with NCIS to ensure their efforts do not compromise or otherwise impede the NCIS investigation.

4. Investigations into Alleged Security Violations Pursuant to SECNAVINST 5520.3B, when classified information has been, or is suspected of being, lost, compromised, or subjected to compromise, NCIS will be notified immediately. The command will conduct a preliminary inquiry in accordance with OPNAVINST 4410.1H unless otherwise directed by NCIS. If NCIS declines investigative action, the command may still request investigative assistance in completing the required inquiry. The preliminary inquiry will often be followed by an in-depth JAGMAN investigation. Therefore, the command must be knowledgeable of both the OPNAVINST 4410.1H and JAGMAN requirements before commencing the inquiry and investigation.

5. Inspector General Investigations. SECNAVINST 5430.57F sets forth the mission and functions of the Naval Inspector General (NAVINSGEN) and the Deputy Naval Inspector General for Marine Corps Matters (DNIGMC). The NAVINSGEN is designated the senior investigative official in the DON and shall initiate and conduct, or direct the conduct of, such inquiries as the NAVINSGEN deems appropriate, with particular emphasis on matters relating to DON integrity, ethics, efficiency, discipline, or readiness. The NAVINSGEN, however, will ordinarily refrain from conducting investigations that focus on individual criminal activity (normally within the authority of NCIS). SECNAVINST 5430.57F is to be construed so as to avoid interfering with other independently authorized investigations, such as UCMJ inquiries/investigations, JAGMAN investigations, and NCIS criminal investigations. Commanding officers, however, are required to extend full cooperation to the NAVINSGEN. Commanding officers should consult with their local SJA to determine whether a matter falls within the authority of the NAVINSGEN.

6. Aircraft Mishap Investigations. Pursuant to DOD Instruction 6055.7, OPNAVINST 3750.6Q, MCO 3750.1A, and the JAGMAN, more than one investigation may be required into aircraft accidents (and for other exceptional incidents described in paragraph 8001.8a). Safety mishap investigations are normally required for all aircraft mishaps, and they are conducted independently and separately from other types of investigations, to include JAGMAN investigations. If evidence of a criminal act is discovered, then no mishap investigation shall be conducted (in-progress mishap investigations shall be terminated) and NCIS should be notified if the matter falls within their investigative jurisdiction.

a. Mishap Investigation Report Requirements are set forth in OPNAVINST 3750.6Q and MCO 3750.1A. Paragraph 0242 of the JAGMAN details the relationship between military mishap and JAGMAN investigations and sets forth limitations on the integration of these investigations, sharing of evidence obtained, and use/disclosure of the separate investigative reports.

b. Privileged Information in Mishap Investigations Certain information contained in mishap investigations is designated as

privileged in order to encourage individuals to provide complete information regarding a mishap and aid the discovery of vital safety information. Witness statements, portions of the mishap investigation, and the opinions of mishap investigators normally may not be released for purposes outside of the safety investigation. Exceptions to the privilege and additional details are available in chapter 6 of OPNAVINST 3750.6Q and paragraph 0242 of the JAGMAN.

7. Ground Mishap Investigations. Paragraph 2034 of MCO P5102.1 provides clarification on the types and requirements of ground mishap investigations in the Marine Corps. That Order requires that legal mishap (i.e., JAGMAN) investigations be conducted independently and apart from safety mishap investigations.

a. Limited Use Safety Mishap Investigation Reports are privileged, internal communications of DoD and their sole purpose is prevention of similar mishaps. Aircraft mishap investigations (discussed in paragraph 8001.6) are a type of limited use safety mishap investigation. These investigations are also authorized for ground mishaps involving complex weapons systems or unique military items such as laser devices, remotely piloted vehicles, armored vehicles, etc., when the determination of causal factors is vital to the national defense.

b. General Use Safety Mishap Investigation Reports are used to record data concerning all mishaps not covered by "limited use" investigations discussed in paragraph 8001.7a. Their purpose is to identify the cause(s) of mishaps and resulting damage or injury so that action(s) may be taken to prevent recurrence. Marine Corps ground mishaps will normally be investigated and the information reported as "general use" mishap investigation reports. In determining whether to conduct a safety investigation, commanders should refer to MCO P5102.1 and consult with their local Director of Safety and Standardization or Safety Officer.

8. Equal Opportunity Complaint Processing. Chapter 4 of MCO P5354.1C, Marine Corps Equal Opportunity Manual, lists command responsibilities when a report of discriminatory conduct is filed. All reported incidents of discrimination, to include sexual harassment, must be investigated. The nature of the investigation will necessarily depend on the alleged misconduct and could result in referral for a NAVINSGEN/DNIGMC investigation, an NCIS investigation, appointment of a preliminary inquiry officer under R.C.M. 303, MCM, 1998, or a JAGMAN investigation.

9. Supply Investigations. Marine Corps policy is that all missing, destroyed, or damaged Government property will be investigated in accordance with the JAGMAN if either the cause is unknown or to relieve or assign individual responsibility. MCO P4400.150E, chapter 6, contains additional requirements concerning the appointment and duties of an investigating officer.

10. BUMED Medical Quality Assurance Program Guidance regarding medical quality assurance investigations is contained in paragraph 0252 of the JAGMAN and NAVMEDCOMINST 6320.7. Section 1102 of title 10, U.S. Code, requires that documents created by or for DoD as part of a medical quality assurance program are privileged and confidential.

8002. ROLE OF THE SJA. The staff judge advocate (SJA) is responsible for advising the commander on all investigations involving the command. The SJA identifies incidents that require investigation, recommends the appropriate type of investigation to be conducted (command investigations are preferred over litigation-report investigations as they are more responsive to stakeholders; courts/boards of inquiry are rarely conducted), supervises investigations conducted by the command, and provides legal advice to investigating officers or ensures that such advice is otherwise available by assigning a legal advisor to the investigation. The SJA requests investigative assistance from outside agencies, maintains liaison with those agencies, and monitors all investigations involving the command conducted by those agencies. The SJA should be notified whenever an outside agency initiates an investigation involving the command. The SJA resolves conflicts when two or more types of investigations are being conducted involving the same incident and maintains liaison with higher headquarters regarding the status of investigations.

8003. SCOPING THE INVESTIGATION. Critical decisions must often be made before a convening or appointing order is drafted and the investigation begins. At the outset, the SJA should determine the purpose of the investigation and the type of investigation(s) necessary to fulfill this purpose. Significant considerations in "scoping" an investigation include:

1. The extent of property damage, injury, and/or death;
2. The impact on civilians, civilian structures, and the environment;
3. Suspected intentional and/or negligent misconduct on the part of servicemembers;
4. The potential for initiating or defending a legal action;
5. The type of expertise needed for conducting a thorough investigation;
6. The experience, grade, education, knowledge, objectivity, and temperament required for an effective investigating officer (IO). Appearances may also play a role in determining who to assign as an IO. The IO's impartiality should not be reasonably subject to

question by any of the stakeholders in an investigation. In some cases, appointment of an IO from outside the command will be required;

7. The identity of those with an interest or stake in the outcome of the investigation (e.g., other commands, victims, parents of interested parties, servicemembers, foreign governments, foreign nationals, State governments, Congress, HQMC, Navy JAG, the media, etc.). This consideration is critical. Failure to identify all the stakeholders "up-front" virtually assures relevant questions will not be addressed and that some stakeholders will be disappointed in the investigatory effort. When stakeholders are disappointed in an investigation, complaints to the command and Congress and charges of "cover-up" may ensue.

8. The possibility of public inquiries concerning the incident and the need for mobilizing Public Affairs assets.

8004. CONVENING INVESTIGATIONS; CONFLICTS; MULTIPLE COMMANDS

1. If the investigation includes allegations of wrongdoing or negligence on the part of the convening authority (CA) (or even the appearance thereof), then the SJA should recommend that the CA consult with the next senior commander (and SJA) in the chain of command to determine if the senior commander should take responsibility for the conduct of the investigation. For example, if a Marine is killed in a training accident and the regimental commander and staff had a role in designing the training, disseminating SOPs and safety information, or controlling the training, then the division commander should select the IO and convene the investigation.

2. If the investigation involves two or more commands, then the SJA should recommend that the CA consult with the common senior commander (and SJA) for all affected commands to determine if the senior commander should take responsibility for the conduct of the investigation or assign the investigation to a single command for responsibility in conducting the investigation.

8005. THE INVESTIGATING OFFICER; EXPERTS; OTHER ADVISORS

1. When practicable, a CA should appoint an IO who is senior to all individuals whose conduct is subject to inquiry.

2. In some cases, consideration should be given to appointing an IO possessing special knowledge or skills in order to conduct a thorough investigation.

3. Experts may be necessary to assist the IO in resolving complex scientific or technical issues requiring specialized knowledge, skill, experience, training, or education (e.g., NCIS/CID agents, other

forensic experts, engineers, maintenance officers, etc.). CAs are encouraged to detail experts in the appointing letter to assist the IO, and the IO should affirmatively seek expert assistance when needed.

4. If criminal or civil litigation may result from the matter giving rise to the investigation, consideration should be given to appointing a legal advisor to ensure evidence is legally obtained, preserved, and available for use at a later time.

8006. THE APPOINTING LETTER

1. If there are specific questions that must be resolved by the investigation, the CA should reference them in the appointing letter.

2. In death cases, CAs should direct IOs to exercise discretion when enclosing graphic photographs (e.g., autopsy photos) to the investigative report. In these cases, the appointing order should direct the IOs attention to section 0241b of the JAGMAN.

8007. NEED FOR CONVENING AN ADMINISTRATIVE OR OTHER TYPE OF INVESTIGATION; NATURE OF INVESTIGATION

1. The conduct of a single investigation may satisfy the requirements for other types of investigations. Commands should strive to combine as many investigative requirements as possible into one investigation, however, safety and mishap investigations normally cannot be combined with JAGMAN investigations.

2. In some instances, it may be appropriate for the CA to appoint a preliminary inquiry officer under section 0204 of the JAGMAN. The CA shall dictate the format and requirements of the preliminary inquiry and may choose to have the preliminary inquiry officer simply gather and document facts for communication to the CA (without providing opinions and recommendations as required by some administrative and other investigations).

8008. ENSURING THAT THE PURPOSE FOR CONDUCTING THE INVESTIGATION IS SATISFIED

1. The SJA must ensure that the CA considers how corrective action, both recommended and concurred with, is initiated, completed, and documented for future reference.

2. In some instances, the IO should be directed to provide interim recommendations to the CA when necessary to avoid further potential injury, destruction, or death. Ensure coordination and follow-up with responsible staff (e.g., S-3/S-4) officers.

3. Regardless of when corrective recommendations are provided, the CA should be advised on the best means for ensuring the recommendations are completed, monitored and, if necessary, modified to ensure that lessons-learned are applied for positive results.

8009. CONSIDERATIONS FOR DEATH INVESTIGATIONS. A major concern in death cases is forwarding timely, relevant, and factual information to the next of kin (NOK). In many cases, the NOK exhibit frustration with the conduct of death investigations and a perceived lack of information from the Marine Corps. On occasion, these frustrations are exhibited through allegations of investigative ineptitude and cover-up. Early and frequent communication from the command to the NOK will aid in preventing the development of adversary relations between the NOK and the command, and will add to the credibility that the NOK give to the death investigation. Guidelines for notifying and communicating with the NOK of a deceased Marine are provided below. More detailed requirements are published in MCO P3040.4D (MARCORCASPROCMA).

1. An investigation into the death of a Marine should seek to answer all legitimate questions surrounding the death that any stakeholder, particularly the NOK, may have. Using the utmost discretion, IOs should contact NOK to obtain relevant background information about the deceased Marine or Sailor and discover the issues of concern to the NOK.

2. In any case in which the cause(s) or circumstance(s) surrounding a Marine's death are under investigation, the Marine's unit commander will send the NOK a letter notifying them that an investigation has been initiated. The letter will be sent within 14 days after the initial notification of death was provided to the NOK. At a minimum, the letter will include the following: (1) names of DoD agencies conducting the investigation, (2) existence of any reports by such agencies that have been or will be used as a result of the investigation(s), and (3) if NCIS is conducting a death investigation, the name and telephone number of the case agent and NCIS family liaison representative (800-479-9685) at NCIS Headquarters, Washington, D.C.

3. Within 30 days after the initial notification of death was provided to the NOK and provided that the first general officer in the chain of command has reviewed the investigation, the reviewer will provide requesting NOK with copy(ies) of any completed investigative and fatality report(s). Review JAGMAN, 0234 for additional requirements and exceptions. If the investigation is not completed within 30 days of the initial notification, then the unit commander is required to notify requesting NOK, in writing, on the status of the investigation. Section 0234d of the JAGMAN also requires, when practicable, hand-delivery of releasable investigations to the NOK by a knowledgeable officer who can discuss the contents with the family.

4. In cases where the Marine's death may have been self-inflicted, it is essential that only accurate facts and not opinions are provided to the NOK.

5. Section 0241b of the JAGMAN requires that graphic photographs enclosed with command investigations be placed in a separate envelope marked: "CAUTION: THIS ENVELOPE CONTAINS GRAPHIC PHOTOGRAPHS. VIEWER DISCRETION WARRANTED." The MARCORCASPROCMAN requires a similar warning if the NOK elect to receive copies of investigative reports containing sensitive or gruesome materials. Said materials must be separated from the investigation and placed in a sealed envelope marked: "CAUTION: THIS ENVELOPE CONTAINS GRAPHIC MATERIALS (INCLUDING PHOTOGRAPHS). VIEWER DISCRETION WARRANTED."